

### § 35.940-3

### 40 CFR Ch. I (7-1-00 Edition)

whether determined by adjudication, arbitration, negotiation, or otherwise;

(d) Fines and penalties due to violations of, or failure to comply with, Federal, State, or local laws;

(e) Costs outside the scope of the approved project;

(f) Interest on bonds or any other form of indebtedness required to finance the project costs;

(g) Ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members, or city attorney, except as provided in § 35.940-4;

(h) Site acquisition (for example, sewer rights-of-way, sewage treatment plantsite, sanitary landfills and sludge disposal areas) except as otherwise provided in § 35.940-3(a);

(i) Costs for which payment has been or will be received under another Federal assistance program;

(j) Costs of equipment or material procured in violation of § 35.938-4(h);

(k) Costs of studies under § 35.907 (d)(6) and (7) when performed solely for the purpose of seeking an allowance for removal of pollutants under part 403 of this chapter;

(l) Costs of monitoring equipment used by industry for sampling and analysis of industrial discharges to municipal treatment works;

(m) Construction of privately-owned treatment works, including pretreatment facilities, except as authorized by section 201(h) of the Act and § 35.918;

(n) Preparation of a grant application, including a plan of study.

#### § 35.940-3 Costs allowable, if approved.

Certain direct costs are sometimes necessary for the construction of a treatment works. The following costs are allowable if reasonable and if the Regional Administrator approves them in the grant agreement.

(a) Land acquired after October 17, 1972, that will be an integral part of the treatment process, or that will be used for ultimate disposal of residues resulting from such treatment (for example, land for spray irrigation of sewage effluent).

(b) Land acquired after December 26, 1977, that will be used for storage of treated wastewater in land treatment systems before land application.

(c) Land acquired after December 26, 1977, that will be used for composting or temporary storage of compost residues which result from wastewater treatment, if EPA has approved a program for use of the compost.

(d) Acquisition of an operable portion of a treatment works. This type of acquisition is generally not allowable except when determined by the Regional Administrator in accordance with guidance issued by the Administrator.

(e) Rate determination studies required under § 35.925-11.

(f) A limited amount of end-of-pipe sampling and associated analysis of industrial discharges to municipal treatment works as provided in § 35.907(f).

#### § 35.940-4 Indirect costs.

Indirect costs shall be allowable in accordance with an indirect cost agreement negotiated and incorporated in the grant agreement. An indirect cost agreement must identify those cost elements allowable under § 35.940-1. Where the benefits derived from indirect services cannot be readily determined, a lump sum for overhead may be negotiated if EPA determines that this amount will be approximately the same as the actual indirect costs.

#### § 35.940-5 Disputes concerning allowable costs.

The grantee should seek to resolve any questions relating to cost allowability or allocation at its earliest opportunity (if possible, before execution of the grant agreement). Final determinations concerning the allowability of costs shall be conclusive unless appealed within 30 days in accordance with the "Disputes" provisions of part 30, subpart J, of this subchapter.

#### § 35.945 Grant payments.

The grantee shall be paid the Federal share of allowable project costs incurred within the scope of an approved project and which are currently due and payable from the grantee (i.e., not including withheld or deferred amounts), subject to the limitations of §§ 35.925-18, 35.930-5, 35.930-6, and 35.965 (b) and (c), up to the grant amount set forth in the grant agreement and any amendments thereto. Payments for engineering services for step 1, 2 or 3